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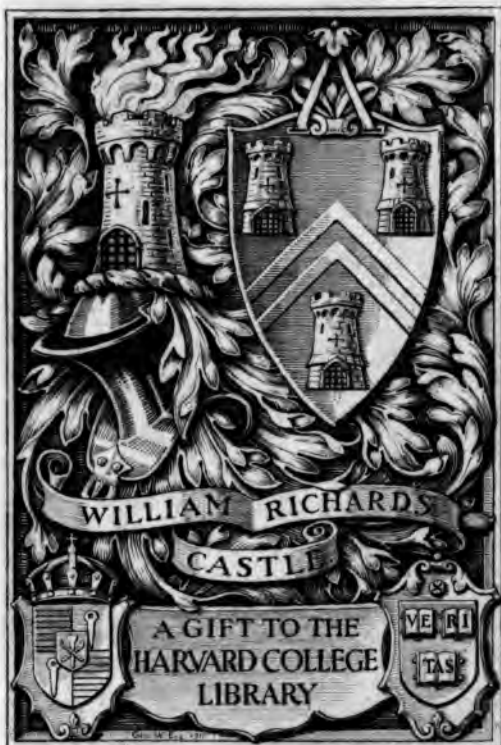
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NOTION 501

IN THE

HAWAIIAN PARLIAMENT,

MADE BY

R. C. WYLLIE, ESQUIRE,

THE KING'S MINISTER OF FOREIGN RELATIONS.

**TO RELEASE JOHN RICORD, ESQUIRE, HIS MAJESTY'S
ATTORNEY GENERAL, FROM A DEBT STAND-
ING AGAINST HIM IN THE BOOKS OF THE
KING'S TREASURY, SINCE JUNE,
1847, RESPECTFULLY RE-
COMMENDED TO**

THE LEGISLATURE OF 1854.

~~~~~
Printed at the Argus Office.

HONOLULU,

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Castle fund

Harvard University

1853

MOTION

OF WHICH NOTICE WAS GIVEN IN THE HOUSE OF NOBLES, ON THE 14th OF APRIL, FOR FRIDAY 22.

"RESOLVED, That the debts standing in the books of the King's Treasury against John Ricord, Esquire, the King's late Attorney General, be made up with interest, to the date when this Resolution may be passed, and the Note or Notes for the same be returned to him, in Consideration of the EXTRA Services to His Majesty's Government, rendered by him, in framing the 1st and 2nd, Acts of Kamehameha III., of 27th April, 1846, and others beyond the duty which could strictly be required of him, as such Attorney General, and because from recent losses sustained by him, he has been deprived of the means of paying his debt, as he intended."

R. C. Wyllie,

House of Nobles, 14th April, 1853.

Mr Wyllie moved the preceding on the 22 April and was seconded by General of Division, Prince Lot Kamehameha.

Mr Wyllie introduced his motion with the following speech:

Before entering upon the subject of the motion, of which I gave notice on the 14th, I crave the attention of this House to a few very serious preliminary words. There are few of the Nobles which I now address; who can refuse to me the credit of much Patience and forbearance under attacks, interruptions and disrespect addressed to me personally. My powers of patient endurance have been sufficiently tested both during the last session and during the present in these respects. While I pride myself as a gentleman, in overlooking both these petty annoyances and their authors, I still more pride myself in being true to the honour and interests of those who are absent. Huz! I am less patient of contradiction and more easily provoked. It is due both to the decorum of this House and to the high position under the King's Government formerly held by Mr Ricord, who is absent, that what I am about to say, on his behalf, should be listened to calmly,

seriously and quietly. In attempting to do him justice, it is not my wish unless provoked to do so, to make any reflections upon others by comparing the value of their services with his. I respectfully and earnestly beg that none of you whom I have the honor now to address will give me that provocation. What I easily pardon in my own case, I am not so ready to forgive where I represent the rights of another. I beg one and all of you, to give me a patient hearing; I would do quite as much in a similar case, for the greatest enemy I may have among you (if I have any) so far as services actually performed and his public virtues, might equally justify me to take up his cause.

Mr. Ricord, on whose behalf I move the Resolution which has been read to this house, entered the service of this Government on the 9th March 1844, under a Commission from the King, as His Majesty's Attorney General. That Commission I have never seen; but, I presume, I am right in assuming that the following may be admitted as a faithful abstract of the duties which it assigned to him;—

"SIR,"

"I am directed by His Majesty to apprise you and the High Officers of the Kingdom, generally, that under date 9th March instant, John Ricord, Esquire, a Hawaiian Subject, has been duly Commissioned to perform the duties of Attorney General of the Kingdom, and to give legal advice, if called upon, to any High Functionary of His Majesty's Dominions, in all the Departments, Legislative, Executive, and Judicial. And should you find it necessary, in the discharge of the duties of your responsible office, to be advised concerning the foreign or domestic laws, your Excellency is entitled to demand his services."

This is the translation of a circular addressed, under that date, by Mr. Judd, to Kekuanaʻoa and other Governors. Besides, a similar Notice, in English, bearing the same date, was published by order of the King.

With what ready zeal, diligence and industry, Mr. Ricord performed those multifarious duties assigned to him, I need not remind you. Neither can you have forgotten his zealous defence of Mr. Judd, in 1844, under the charges brought by the THEN Commissioner of the United States, Mr. Brown—his defence of Mr. Jarves—of the late Mr. Winphister when accused of perjury, or of the King's Government in the action brought by Messrs. Ladd, & Co.

What I would more particularly call your attention to, are his EXTRA SERVICES, in establishing the land Commission and in laying down in concert with the late EVER-TO BE-LAMENTED, Mr. Richards, certain clear and well defined principles, for the division of lands, in proportions just to the King, just to the Chiefs, and Land-lords, and just to the poor tenants; and in framing the Acts of 27th April, 1846, known as the 1st and 2nd of Kamehameha III.,—as also the draft of an Act to organize the Judiciary, which, though not servilely copied by Mr. Lee, was, I have no doubt, of some use to him.

In my view, it would have been honourable to the Legislature of the country to have voted thanks to Mr. Ricord for those extra ser-

vices, and to have offered him a pecuniary reward, adequate to their importance. This was not done, nor do I believe that Mr. Ricord would have accepted any such reward, because, during his time, it was an understood principle that every high Officer of the King was bound to render His Majesty every possible service, whether within the sphere of his proper duties or beyond that sphere, without any other consideration than that of his salary. But though speaking entirely without any authority from him, I have reason to believe that the remission of his actual debt to the Kings Treasury, would now be well received by him. I know from himself that, from a series of disappointments and losses, which I much regret, he is now penniless; he is looking round for some new field in which to begin the world anew; and I do think that his energies would be increased by the knowledge that he could go forth into the world, relieved of the burden of his present debt, by the grateful appreciation of his former services by this Government.

Personally, I owe Mr. Ricord no favour whatever; upon many points we took different views; but I have always felt that when he retired from the service of the King, some more substantial acknowledgement should have been made of the value of his services.

Under the strong sense of bare justice to him, I have on sundry occasions moved, in another place, that the amount of the Treasury claim against him should be debited to the Department of law. It has always been met by technical objections and difficulties, to remove which I now move for the joint action of the two houses of the Legislature.

It is not a bill or Resolution for RAISING THE REVENUE OR FOR CALLING FOR ANY EXPENDITURE OF THE PUBLIC MONEY, which by the 79th Article of the Constitution requires to be originated in the House of Representatives. It is the remission, in grateful consideration of by-gone services RECEIVED and not PAID FOR, at the time, of a debt which so far as I can judge, is at present utterly hopeless of recovery. If it should prove otherwise, by Mr Ricords success, which I hope it may, knowing his high spirit and how much he prided himself on serving the Government and all who applied to him, without any other reward than his scanty Salary, I feel confident that he will hereafter, repay every farthing of his debt, principal and interest, even altho' its remission should be fully decreed by the Legislature and by the King.

Mr. Ricord as early as the 29th, October 1846. had petitioned the King to permit him to resign; it pleased His Majesty, in a very gracious manner, to accept that resignation on the 13th March, 1847, but nevertheless he (Mr. Ricord) continued in office till the 17th May 1847, having previously framed the joint Resolution of the 4th May, 1847, to obviate any inconvenience to the Government from his withdrawal, by providing that "the Cabinet Ministry" may by vote and Resolution, with the sanction of His Majesty, from time to time assign to any person being an Hawaiian Subject, any of the duties powers, rights or privileges, in and by that act (that of 27th April

1846,) assigned to the Attorney General, as law adviser of the Crown and prosecutor and defendant of the rights litigant of this Kingdom."

It was only in August 1848, that under that law, Mr. Bates was retained, on the part of the Government, under an agreement for the first year that between the salary allowed to him and the avails of his private practice, his yearly income should be brought up to \$3,000.

This was exactly double what Mr. Ricord ever had; and I beg you to bear in mind, that having served from the 9th March, 1844 to the 17th May, 1847, if paid the same as Mr. Bates, he (Mr. Ricord) would have received during that period \$9649-0. But his salary having been only \$1,500 yearly, without liberty of private practice, he only received 4824-50. If I am wrong in this calculation the Minister of Finance can correct me.

But I must here add that taking into account salaries alone without any other benefit obtained of Government, during those years Mr. Ricord received as much as any of the Kings Ministers. It was only in 1848 that their salaries were increased to \$3,000 a year. Yet in considering the value of so much EXTRA WORK done by Mr. Ricord, as before mentioned, and the propriety of now remitting the hopeless debt which stands against him, I think it not altogether irrelevant to compare the amount of that debt with the inferiority of his pay, as compared with that secured by a special agreement to the Gentleman who was retained to perform what duties the law had assigned to Mr. Ricord.

Even out of his small salary (and Mr. Ricord enjoyed no profits from private practice nor perquisites of office) it is well known that he spared much to give away in charity and in support of works of benevolence.

On the 7th April, 1847, in contemplation of his departure, he insisted upon having his own and all other Ministerial Accounts strictly audited.

He requested me to audit his account from 9th March, 1844, to 31st March, 1847, which I did. That account was left by him in my possession. If necessary, I will lay it before this house, with the results of my audit as made known to himself.

That no misapprehension may exist in regard to the causes of Mr. Ricord's separation from this Government, I will here read the following documents:

First, Mr. Ricord's letter to the King, of 29th October, 1846.

DEPARTMENT OF LAW,
Honolulu, 29th October, 1846.

SIR:—I am at length impelled by a sense of duty to acquaint Your Majesty that, so soon as I can conclude in a beneficent way the Arbitration between your Government and the late firm of Ladd & Co., and so soon as I can, with safety to your Government and Your Majesty's Court, in retroceding the residuary assets of French & Greenway's estate, I desire, from private motives and feelings, to surrender

to Your Majesty the Seal of this Department, with which I have been so long honored.

I cannot, in good faith nor with safety to Your Majesty, leave incomplete the two important cases above mentioned, because I am party by name to the compact 13th July, 1846, and because the original assignment from French & Greenway, in which Consul General Miller concurred, was expressly based upon the assumption of my agency. Should I now withdraw from either of those cases, by their wording, the instruments on which they rest would be vacated to the prejudice of your Government and to my personal dishonor. Nor do I think that any other individual could acquire so complete a knowledge of the details which they involve.

I sincerely hope no other like cases will ever arise, and that these will be speedily adjusted in the most satisfactory manner.

My object in giving this timely notice is that Your Majesty may consider the propriety of retaining some lawyer in my stead. I think it would not be safe to be entirely destitute of professional advice in the present growing importance of your sea-port towns and the very rapid influx of foreigners, who will be sure to take technical advantages in your courts. I can confidently recommend William L. Lee, Esq., an American lawyer, now in his progress to Oregon, as well grounded in his profession. I might prevail on him to remain, if it so pleased Your Majesty, though his intentions are different. In any event I can conscientiously recommend to your favorable consideration John R. Jasper, Esq., of whose merits and abilities, for all practical purposes connected with ordinary law business, I have had considerable personal experience. He is familiar with all the transactions of this Department for the last three years, having perused and filed all the back documents, letters and papers connected with my office, and made such a vocabulary of them as will enable any one easily and quickly to refer to any past transaction. His general education is good, his understanding is acute; his morals, so far as I can learn, are unexceptionable, and he has acquired very considerable knowledge of the legal science from books.

Wherever my lot may be cast I shall always

Remain, Sir,

Your devoted and faithful Subject,

(Signed.) JOHN RICORD.

In the letter just read, you cannot fail to receive, that in announcing to the King his wish to resign, from "private motives and feelings," Mr. Ricord showed great anxiety not to leave His Majesty beset with legal difficulties; and to prevent these, strongly recommended His Majesty to employ Mr. Lee, who had then arrived, but was on his way to Oregon.

I now read to you a translation of the gracious reply which the King sent to Mr. Ricord, on the 18th of March 1847:

[TRANSLATION.]

PALACE, Honolulu, }
March 13th, 1847. }

HON. JOHN RICORD, Attorney General,

MY RESPECTS TO YOU:—I have delayed to write you until there should be evidence that the great existing difficulties were about to be terminated..

I have learned, with pleasure, that the difficulty respecting the Estate of French & Greenway, is already at an end, and that the difficulty with Ladd & Co. is probably approaching its termination.

I am able, therefore to give my assent to your departure to seek your own welfare in accordance with your own communication to me of October 29th, 1846.

In evidence of my kind feelings towards you, I have given orders to the Minister of Finance to pay you a sum of money out of the appropriation made to me, sufficient to make your salary, during the whole period of your service to me, equal to the highest salary received by any foreign officer in my employ.

Whenever you take your departure, you will deliver all the papers and Books of your Department into the hands of the Premier, or to any officer appointed by him to receive them.

May the blessing of God rest upon you,

(Signed) KAMEHAMEHA.

A true translation, (Signed,) WM. RICHARDS.

DEPARTMENT OF LAW, }
Honolulu, 9th April, 1857, }

I certify the foregoing to be a correct copy of the translation made by His Excellency, William Richards, from the original Hawaiian, of a letter addressed by His Majesty to the undersigned

(Signed,) JOHN RICORD,
Attorney General.

I have often stated that in every thing that is liberal, noble, just and generous, the King is fifty or one hundred years in advance of all his Counsellors. If proof were wanting of that fact, it will be found in the letter which I have now read.

You will observe in what courteous, respectful and grateful terms Mr. Ricord acknowledged the King's letter and his bounty.

DEPARTMENT OF LAW, }
Honolulu, 29th March, 1847. }

SIRE:—I cannot sufficiently express my gratitude for the honor conferred, and the bounty bestowed, upon me by Your Majesty's letter of the 13th instant.

Your Majesty's Royal letter alone, is in itself a proof inestimable that Your Majesty has been well pleased with my humble services.

I shall ever preserve it as the most valuable of my private credentials, while the pecuniary bounty it bestows upon me will doubtless

enable me to lay the foundation of some profitable professional enterprise in California, whether I design going.

Your Majesty's bountiful present comes the more opportunely, since I have not been careful of myself or economical of my salary, while in the employ of Your Government, but, on the contrary, have passed my earnings freely into circulation again as fast as received, instead of hoarding them as common selfish prudence required me to do. In this way much of the pay which your Majesty's liberality has accorded me for the last three years, has been contributed by me to the poor and the churches, schools and public works, by voluntary subscriptions for different parts of the islands.

Whatever of success therefore may attend my professional career at the bar or in the political affairs of the United States, I shall always gratefully attribute to your Majesty's favor, which will thus have given it impulse.

In regard to the resignation of my office, which your Majesty has graciously allowed me to tender, I beg leave to state, that it would be impolitic before the passage of a Resolution providing for the temporary discharge of the duties of this Department. I have accordingly framed and with your Majesty's permission, will submit, such a resolution in my Annual Report to the House of Nobles and Representatives.

Otherwise there would be a temporary interregnum in the Bureau of the Registry, in the Notarial Bureau, in the Marshalcy and in the Bureau of the Prosecutions, which would give rise to many evils and difficulties before the courts of Justice.

Besides the reasons above given there are others of great importance, which make me desirous to retain my post for a short time longer, in order to render your Majesty the full and complete service which is in my power.

Among these is the still depending difficulty with Ladd & Co., graciously alluded to in your royal letter. This is liable to be resumed before the Arbitrators at any time, while the Treaty compact of 13th July, 1846, remains unfulfilled by an award of the Arbitrators, or a voluntary discontinuance by the claimants, or a judgment of non-suit, or of non-prosecution. I entertain hopes however, that it may be forever put at rest by the Negotiation which your Majesty has been pleased to allow me to enter upon with Ladd & Co.'s creditors, through the Consul of France. Should the Arbitration be resumed however, I fear that no other lawyer would be found so competent to continue what has already assumed a complicated form involving critical knowledge of the numerous facts of the case and much technical nicety.

The negotiations with the creditors has also assumed a voluminous form, which would greatly embarrass a fresh hand; unacquainted with the repeated verbal conferences incident to every negotiation.

The law also requires me to make a full report to the Legislature during the month of April, which I have prepared and which I beg your Majesty will suffer me to present them officially before retiring.

After this in accordance with section 29th; of the "Act to Organize the Executive Ministry," I shall have great pain in availing myself of your Majesty's permission to retire by thanking your Majesty in the presence of my Colleagues in Privy Council.

I shall ever remain Sire,

Your Majesty's dutiful and grateful servant,

(Signed.) JOHN RICORD.

To His most Gracious Majesty,

THE KING.

I certify the foregoing to be a correct copy of an original letter addressed by the undersigned to His Majesty.

JOHN RICORD,
Attorney General.

DEPARTMENT OF LAW, }
Honolulu, 9th April, 1847, }

This letter was left with me, under Mr. Ricord's official seal and signature, on the 9th April 1847. It shows, that however anxious he was to take early advantage of the new field then just opening in California, he was still more anxious not to leave the King abruptly, or without the previous fulfillment of all the duties which the law had made incumbent upon him. You will find in the allusion made to his prodigal use, for charitable purposes, of the small salary allowed him, a strong reason why, when he did leave, he could not otherwise leave than in debt; but, in the same, you will find equally strong grounds, I hope, for supporting my motion that the debt then contracted, and still standing against him, should be FOREVER OBLITERATED. It is no less just to him, than just to the King's Government whose honor, if I mistake not, is deeply interested. Is there one who can object to this, or to follow in the path where the King himself has set the example?

I have now to advert, and I do it with some pain, to a remark made in another place, where I urged the same motion, which I understood as affixing a stigma on Mr. Ricord, for throwing up his Oath of allegiance to the King. I hope I misunderstood the party who made the remark; but, in case I should not have misunderstood him, I here crave the indulgence of the House, while I read such official documents as will for ever vindicate Mr. Ricord, from any slur in the matter of the return of his oath of allegiance.

Foreign Office, May 18, 1847.

SIR.—Pursuant to a resolution of the Privy Council, I return to you the Oath of Allegiance to the King, taken by you on the 9th day of March, 1844, and make known to you that His Majesty, under the special circumstances apparent in your letter to him of the 29th of October, 1846, and in consistency with His permission to you, by His reply of the 13th of March, 1847, has been pleased to absolve you from all allegiance to Him, as a subject, from yesterday's date.

In returning under your native allegiance to the United States, I feel confident that your obligations to this Government, from the 9th of March, 1844 to this date, will ever be held by you in honorable regard, and I hope in the service of your own country, you will reap the most eminent success.

I have the honor to be, Sir,

Your most obedient, humble servant,

(Signed)

R. C. WYLLIE.

JOHN RICHARD, Esquire, &c., &c., &c.

Honolulu, June 9th, 1847.

SIR.—I was honored through your medium, under date 18th ult., with His Majesty's gracious orders in Privy Council, absolving me from all future allegiance to him and to his Government, and returning me the original oath of allegiance which I had subscribed on the 9th day of March, 1844. This fact was duly notified by me to Joel Turrill, Esquire, Consul of the United States, on the 24th ultimo, to whom I also exhibited the enclosures accompanying your Excellency's official despatch.

You are already apprised of the motives, which, before retiring from the high office of His Majesty's Attorney General, induced me to solicit this singular grace; of the opposition which it encountered from my honored Colleagues, both native and naturalized, and of the pain which attended such a request on my part. I have hence received it at His Majesty's hands with equal disrelish and have been slow to acknowledge the reception of documents which formed my last connecting link with a nation and a service in which I have been the continued recipient of honors, confidence and favors from the day of my advent. Be pleased to render this apology acceptable to His Majesty and the Honorable Privy Council for the delay which has thus ensued, and urge it for me as a convincing proof that I feel no alacrity in the departure.

I have also respectfully to request that you will cause some official public announcement, by authority of your Government, of the change that has thus occurred in my political status, in order that I may reap all the benefits intended to be conferred by it, and which have not already accrued.

The primary and most essential motive which, you well know, actuated me to the request, while yet in office, was that it was currently reported that through the united exertions of my political enemies, both here and in the United States, strenuous efforts had been making from the fall of the year 1844 to procure some specious charge against my private character from the United States which, taking me at this distance by surprise, would entail reproach upon me—would render my longer continuance in His Majesty's service discreditable—would taint my past official acts, and would fix a stain upon the integrity of His Majesty's Government. This charge coming from my native country and threatened by my native compatriots, I begged His Majesty to suffer me to meet and confute, as an American citizen, not protected, even in appearance, by the foreign charac-

ter of an Hawaiian Subject in the courts of a domicile alien to the United States.

This is the privilege for which I now have to be most grateful to His Majesty, whose bounty to me has been in no other instance more signally shown; and for this privilege, I now have the honor to tender His Majesty my thanks with clean hands as the verdict of a jury of my countrymen rendered, before the Honorable William L. Lee, on the 8th instant, will testify.

The next benefit intended to be conferred upon me by His Majesty's absolution, is the removal of all impediments to my political and professional success in my native country, in token of his approbation of my past services, which His Majesty was pleased to express to me under His Royal hand, 15th March, 1847. In order to the more certain enjoyment of this secondary privilege, I beg the public announcement already solicited. For political favors, however, I feel no longer any relish, and their bestowal on the part of my native country or my native compatriots, is a contingency too remote to have been the basis of His Majesty's favor in this respect. There I neither desire nor expect, while I will not disguise from you the sense of my pride at becoming once more, without caviel, in all respects a citizen of that great Republic, entitled to all my native rights, privileges and immunities secured by her constitution. Be pleased, therefore, officially, to signify this fact to Anthony Ten Eyck, Esq., Commissioner of the United States, near His Majesty's Government.

I have the honor to be,

Your much obliged and very obedient servant,

JOHN RICORD.

His Excellency, R. C. WYLLIE,

Minister of Foreign Relations.

No. 29.

FOREIGN OFFICE, 15th June, 1847.

SIR:—I had the honor to receive, yesterday, your Despatch No. 26, of the 11th, with a postscript of the 14th instant, in reply to my letter No. 27, of the 10th, making known to you, by request of Mr. Ricord, that he had ceased to be a subject of the King, from the 17th of May last. In making that communication, I yielded to an express wish of Mr. Ricord, and had no desire to start with you a Diplomatic discussion, in relation to the King's prerogative, in the matter of Allegiance—the policy of extending to all aliens the precedent of Mr. Ricord's absolution—the abstract nature of Allegiance, or the question whether Mr. Ricord is entitled to any protection from the United States, while he remains in the Territories of the King.

As Mr. Ricord does not intend to remain in the territories of the King, but to reside, henceforth, in the territories of the United States, I presume he never meant to seek for the protection of his Government so long as he abode under the King's Jurisdiction.

I believe I may take upon me to assure you that nothing was farther from the King's view than that by releasing Mr. Ricord from the obligations of his Oath of Allegiance of the 9th March, 1844,

he released him from any disabilities attaching to him, in consequence of that oath, by the laws of the United States. His Majesty disclaims all right to interfere in the laws of foreign nations, regulating the Allegiance of their citizens or subjects, and upon the same principle he repudiates the right of those nations to prescribe to him what laws he shall pass relating to Allegiance to himself or whom he shall admit to or absolve from his Allegiance.

He might, nevertheless, out of personal respect to you, receive, as a recommendation, your suggestion that the absolution of Mr. Ricord should form a precedent upon which aliens could become subjects and cease to be subjects, at pleasure, were it not that he never intended that Mr. Ricord's VERY SPECIAL CASE should form such a precedent, or should have the smallest bearing upon the exercise of his Sovereign right to keep the rights of subjects and aliens as clear and distinct as they are very carefully kept in the United States and Great Britain and most other civilized countries.

It does not appear to me to be a conclusive argument that because "a precedent for such a proceeding cannot be found in the history of any civilized Government of modern times," the King may not have acted very wisely in dispensing with Mr. Ricord's Allegiance. You must readily see that were Governments to do nothing but what they have the sanction of precedents for, most political reforms would become impossible. Even for your own suggestion, which I have referred to above, coming from the Representative of a foreign nation, it would not be easy to find the sanction of a precedent.

But, in my view, what the King has chosen and been advised to do, in this case, is not so wholly without precedent as you assert. Compulsory abjuration of Allegiance, and even of the Realm itself, was for ages part of the common law of England; it was pronounced as late as 35th Elizabeth, chap. 1, and only abolished by the statute 21st James, chap. 1, 28.

I am aware of nothing in the ancient usages of this Kingdom, or in the Constitution which disables the King from exercising a power in a gracious sense, which the Kings and Queens of England, for many civilized ages, exercised in a penal sense. But even if there should be any thing unconstitutional in the act, so far as the exercise of the power is concerned, it is a matter of constitutional and not of foreign remedy.

In permitting Mr. Ricord to leave the Kingdom and return to his natural allegiance as the laws of the United States may allow, the King by no means exempts Mr. Ricord from that local allegiance which he and all other aliens owe to the King, so long as they choose to reside under his jurisdiction. The safety of His Kingdom demands that He shall consent to nothing that can weaken the obligations of that local allegiance.

I have made these remarks, not with a view to diplomatic controversy upon matters of internal regulation, but to prevent my silence from being construed either into proof of personal neglect or of acquiescence in all the views expressed in your despatch.

I take pleasure in renewing the assurance of the sincere personal

esteem and consideration with which I have the honor to be, Sir,

Your most obedient, humble servant,

(Signed)

R. C. WYLLIE.

ANTHONY TEN EYCK, Esquire,

U. S. Commissioner, &c., &c., &c.

From these letters, you will see clearly that the oath of allegiance was returned to Mr. Ricord with the full sanction of the King's government. It was returned, not so much because he asked for it, as because purposing to go to California, in quest of professional preferment there, it was considered an act of bare justice to him, that in returning to his native allegiance, he should do so, without a pretext for the argument that might be urged against him, of being an ALIEN, by reason of the oath he had taken here. As an American Lawyer, it was natural that on his arrival, he should introduce the precise wording of the American oath, with its obnoxious abjuration clause. You must all remember how much odium was attached to Mr. Ricord, on account of his having taken an oath with such a clause in it. His own countrymen, private and official, forgetting that it was but the oath of their own government, represented him and other officers of the King who had taken it, as POLITICAL RENEGADES, unworthy of decent society, in fact, combined to send him and them as the saying is, "to Coventry." After such experience here, was it unreasonable to suppose that Mr. Ricord, in California, might meet the same opposition, from the same cause—and are the King's Government to be blamed for endeavoring to free him, so far as they could, from that cause of persecution?

I did all that I could to convince Mr. Ten Eyck (then Commissioner of the United States) that the Government had pursued a proper course in the matter.

But Allegiance is not a mere word or subscription to words expressing an oath—it is an inward sense of duty and faithfulness in acting up to that sense of duty, of which, if I may judge from his letters Mr. Ricord, partakes as much now in Tahiti, as he did while he was here: under the full obligation of the oath which was returned to him. There is nothing whatever in the return of that oath, which can justly be urged against my motion.

In his letter to me of the 9th June, 1847, where it alludes to his reasons for separating himself from the King's Government, he evinces a regard for its honor, even superior to his own interests.—That is another consideration, why this House should unflinchingly approve of the Resolution which I have moved, with a view to obtain a joint resolution, in proper form, having the force of law to release Mr. Ricord from the debt which still hangs over his head.

In reading my notice of motion on the 14th, the Minister of Finance raised a Constitutional objection to it, on the ground of the privilege of the House of Representatives; and I then pledged myself that after placing my motion fully and fairly before the House, I would give all due consideration to any objections so founded. I

am now ready to redeem that pledge; and I thank the House for the patience with which they listened to me.

The Minister of Finance said that having listened to all that had been said in support of the motion he had only to repeat his objection to the motion when notice of it was given—that it was contrary to the Constitution to introduce it into this House, and to express his hope that Mr. Wyllie having had an opportunity of saying so much in favor of a friend would withdraw his motion.

Mr. Wyllie said although he did not concur in the Constitutionality of Mr. Judd's objection, yet it was sufficient for him (Mr. Wyllie) that such an objection had been started to mark his respect for the House of Representatives, by withdrawing his motion here, and having it introduced in that House.

On the same day (22d April) Mr. Wyllie sent all the documents connected with his motion to the Hon. Charles R. Bishop, member of the House of Representatives, along with the following letter.

HOUSE OF NOBLES, 22d April, 1853.

SIR—I have the honor to submit to your consideration, as a member of the House of Representatives, distinguished alike for intelligence and a delicate sense of honor and justice, the documents enumerated below, on the subject of a motion which I had the pleasure this day to make before this House, in favor of the King's late Attorney General, John Ricord, Esq.

I have made the motion without any suggestion whatever, direct or indirect from Mr. Ricord, only under a sense of what the King's Government owe to their own honor, and to him in BARE JUSTICE.

I do not consider that the motion is one which the 79th article of the Constitution forbids this House to originate, but such an objection has been started, and without being convinced that the objection is sound either under that article, the usages of the British House of Lords or of the American Senate, I have at once yielded in order to show that I would not be guilty of even the shadow of encroachment on the privileges of the Representatives of the people, in what concerns the raising and expenditure of the money of the people. For the last five years it has been my firm and conscientious belief that without that wholesome check of the Representatives of the people, fearlessly, impartially and universally exerted, the evils of jobbing and corruption would destroy both the credit, all confidence in, and the very existence of the King's Government.

Mr. Ricord while a member of this Government, was a stern opponent to these degrading vices in public men; he showed his just abhorrence of them, even after he himself should be absent, by recommending as head of the department of law and justice the gentleman who has since proved himself to be, above all others, best calculated to discourage all such nefarious practices. It would be indeed difficult to say whether the King's Government owe most to Mr. Ricord for the services actually performed by himself, or for the extremely judicious recommendation to which I refer. Upon the value of that

recommendation to the King's Government and to every interest, origin or national, dependent on a pure, good and enlightened administration of justice, I am sure, every foreign Representative and Consul, every merchant in the Kingdom, be his notion what it may, every native sufficiently enlightened to form a correct judgment, and every christian with grace enough to prefer genuine virtue to vice, wearing its outward garb, would pronounce an unanimous and approving verdict.

Therefore, for the great benefits resulting to the Hawaiian people both for services performed by Mr. Ricord and for recommendations given by him, I cannot otherwise than believe that, consulting your own sense of what is right, proper and just, you will condescend to bring my motion, or some other of a similar nature, which you may, in your own good judgment prefer, at an early day before the Hon. the Representatives of the Hawaiian people, making such use of this letter, and of all the documents sent herewith, as to you may appear discreet.

If not opposed to the rules of the House, I would wish the documents returned to me.

With much respect, I have the honor to be,

Sir, your most obedient humble servant,

(Signed.) R. C. WYLLIE.

To the HON. CHARLES R. BISHOP,

Member of the Honorable House of Representatives.

The majority of the members in that House being Hawaiians, Mr. Bishop placed his letter and the other papers in the hands of the Hon. Francis Funk, as better acquainted with the native language, who was just and generous enough to forget what he had himself suffered from a sentence of Mr. Ricord, in the case of the French Captain, Le Tellier, and gladly undertook the charge of the motion. After due notice given, and an eloquent speech in its favor, by the Hon. Mr. Kauwahi, the motion was brought forward and put to the vote on the 9th of May.

Messrs. Aka, Bishop, Funk, Kuona, Kulana, Kauwahi, Kiha, Laanui, Maikai and Robertson voted for the motion. Against the motion voted Messrs. Bond, Keaniho, Koiku, Kalamu, Kekipi, Keawepoi, Kulihouana, Pii, Richardson, Smith, Thurston and Ua.

The motion was thus lost by a majority of two, and having been so lost cannot again be introduced during the session.

Mr. Wyllie believes that the merits of the case were imperfectly understood, and therefore, prints all the documents relating to it, for use hereafter as occasion may require.

Mr. Wyllie understands that the minds of the members of the House of Representatives were influenced against Mr. Ricord, by an assertion that he had recently been one of the followers of General Buge in his attempt upon Guayaquil. Mr. Wyllie's information is that Mr. R. had taken his passage from Valparaiso to San Francisco in a vessel that had cleared out for the latter port, but whose real destination, unknown to Mr. Ricord, was to carry recruits to General

Flores—that Mr. Ricord had thus been insnared to his own great disappointment and loss, and that he had protested and instituted action against the parties for damages. But even although it had been true that he had taken service under General Flores, the latter was neither a Pirate nor a Freebooter, and strictly speaking it would no more have disgraced Mr. Ricord, than it disgraced General Sam Houston to have joined the first insurgents of Texas.

In attempting to obtain bare justice to Mr. Ricord for services performed in this kingdom, Mr. Wyllie did not think it relevant to the case to touch either upon his previous career or his subsequent career elsewhere; and he much regrets that any one should have taken a contrary course.

In all money matters while in the service of the King's Government, Mr. Ricord was strictly and exemplary correct. The following is a copy of Mr. Wyllie's observations on Mr. Ricord's account, as obtained from the Treasury, and submitted to Mr. Wyllie for audit:

"This account is not kept in proper form."

"In 1844, the sum allowed to Mr. Ricord as salary, should have been placed to his credit. Every thing paid to him or drawn for by him for his own use, should have been placed to his debit, and at the end of the year, the account balanced, by CREDITING to him, in new account for 1845, any balance that may have been due to him for 1844, or by debiting to him any sums that he may have received beyond his salary, in new account for 1845."

"In like manner in 1845, Mr Ricord should receive credit for the full amount of his salary, and be charged with whatever he may have received or drawn for, and the balance, whether for or against him, should be transferred to new account for 1846."

"The account for 1846 should be kept in the same way."

"This is the proper plan for every ministerial account, in fact, for every account; and every man ought to have a copy of his account passed to him at the end of the year."

"So long as the Government is in debt, and has to pay interest, it ought to allow the same rate of interest on all amounts of salary which government officers may leave in the Treasury undrawn for. By doing so the Treasury would not lose one cent, while it would encourage economical habits in its officers."

Mr. Ricord's account as he obtained it, presented it to Mr. Wyllie and as it still exists in his hands is a continuous medley from 9th, 1844 to 31st of March 1847, without any intermediate balance, containing such items as the following,—\$84 for food for sick persons, \$134.63 to Pelly & Allan, \$673 to Williams & Marshall for the arbitration in the case of Ladd & Co., and \$240 more for the same arbitration, none of which ought ever to have been entered into his private salary account. Nevertheless the account was a very honest one, so far as Mr. Ricord was concerned; and it was made substantially correct on the 31st of March 1847, by a payment to him in cash of \$1269.71 cts.

If the Treasury claim against him be \$2,000 with interest from the 10th of June 1847, it would have amounted on the 22d of April 1850; (the day of Mr. Wyllie's motion) to \$3401.86 cents, which is just

\$1432.64 less than he would have been entitled to on the 19th of May 1847, had he been retained from the 9th of March 1844, at the same rate, as it cost the Government to retain Mr. Bates, on the 15th of August 1848. Therefore, in all conscience, the \$2000 charged to Mr. Ricord on the 19th of June 1847 was then due to him for his past services. He had extinguished it by his previous hard labor, in grave matters not belonging to the department of law. It is of the easiest possible demonstration that without allowing any thing for the use of his brain, the use of his pen alone, saved others quite as much as the whole \$3401.86, if he had charged at the same rate as others have subsequently been paid for mere translations.

While fully acknowledging the great service to the nation rendered by Mr. Ricord acting in conjunction with the late Mr. Richards in laying down the principles by which the Land Commissioners were to be guided in the division of lands, Mr. Wyllie is not to be understood as having agreed with either of them in all points relating to that division. This will be seen by the following documents.

MR. WYLLIE'S NOTES OF JULY 1846 TO MR. RICORD'S GENERAL PRINCIPLES FOR ADJUDICATING TITLES TO LAND.

No. 1. Mr. Wyllie was under an impression that the King was not by ancient usage the absolute and unqualified proprietor of all lands in the kingdom. By answers to question No. 58 in the investigation at the Palace, and by the evidences of witnesses, it appears that the King holds no lands whatever as their absolute and unqualified proprietors; that what lands are reputedly his, he cannot dispose of without the knowledge and consent of the Chiefs, and that the Chiefs cannot dispose of the land reputedly theirs, without the knowledge and consent of the King.

No. 2. Under such circumstances, a clear and distinct individual title to land cannot well exist; the King sought to remedy this great evil, and hence he appointed the Board of Land Commissioners, with the powers and for the objects which have been advertised.

No. 3. That limitation on aliens ought not to affect their rights under previous grants legitimately made.

No. 4. Mr. Wyllie would alter the first general principle, so as in place of the words 'infer a life estate,' to use 'infer the validity of the Title, according to the terms on which the land was originally obtained, as the evidence may make clearly apparent; and where the evidence leaves it doubtful what those terms were, the Board will infer a life estate only, which life estate may be converted into a permanent title, on commuting for the Government right to one third, as hereinafter mentioned.'

No. 5. Mr. Wyllie would add after the word ESTATE, 'which may be rendered permanent in manner aforesaid.'

No. 6. Mr. Wyllie would add after TITLE, 'but the claimant will be allowed to make good his title, by making a fresh bargain for the land, under which he shall receive credit for the amount of what value consideration he may have before paid.'

No. 7. Mr. Wyllie does not see, after the title of the King has been extinguished, why the proprietor should remain subject to any corporate right to be exercised by the King, further than the King's right to impose taxes on the land as on all others, or to take it for the public service, after compensating the owner.

No. 8. Mr. Wyllie would render the commutation fixed for all parties alike, in this manner, viz: the claimant to pay in cash the third part of the value of his land, as may be appraised, or annually a third part of the rent of the same land, as existing at the time, or as may be appraised.

A. Mr. Wyllie, if a member of the Board, would say little before A, as he thinks all that the public have a right to know is the legal creation of the Board, and the principles adopted by them, in consequence of that creation; Mr. Wyllie thinks when these principles are objected to, it would be the time to defend them by showing that they are consistent with the powers legally belonging to the Board.

As a general principle Mr. Wyllie would confirm every man's title according to the conditions on which it was granted, and take care to impose no new conditions whatever, that not being equitable, would be impracticable.

Mr. Wyllie thinks the Government have a right to alter the conditions of future purchases and leases of land, but not to alter those of past transactions.

An attempt of this kind will be sure to be resisted by all nations; by making the attempt, the Government would convict itself of dishonesty, while it would gain nothing, because it would have to desist from the attempt.

Mr. Wyllie thinks the general principles ought to be so clearly and minutely drawn up as to render it impossible for evil-minded persons to mis-construct them, thereby deterring parties from applying to the Board, and grounding pretexts for reference to foreign governments.

N. B. The marginal numbers herein, refer to others placed on the draft of General principles which Mr. Ricord submitted to me, insisting that I should give him my views in writing.

R. C. WYLLIE.

Honolulu, May 13, 1853.

DRAFT OF RESOLUTIONS PREPARED BY MR. WYLLIE, FOR MR. RICHARDS, ON THE 3D OF JUNE, 1847, RELATING TO THE TENURE OF, AND TITLES TO LAND.

1. Resolved, That in all cases in which a freehold estate less than allodial, in any house or building lot has been, or shall be hereafter awarded to any Hawaiian subject, by the Board of Commissioners to quiet Land Titles, we approve of the principle of reducing the rate of commutation for the same from 1-3 to 1-4 of the present unimproved value, to be ascertained by a commission appointed for that purpose; and that on payment of said commutation, a patent in fee-simple be given to the confirmed claimant.

2. Resolved, That in all such cases it shall be optional with the party applicant either to pay the amount of commutation in cash, or to pay it within fifteen years, provided such party legally grant and register a mortgage on the premises for the amount and for interest, at the rate of twelve per cent. yearly, till the principal be redeemed, and provided the government have the right to foreclose their mortgage at any time after two yearly instalments of interest shall have become due and not been paid.

3. Resolved, That in all cases in which a freehold estate less than allodial in any building lot has been or shall be awarded to any person, whether a domiciled alien or naturalized or native subject it shall be optional with such person to pay for a certificate of that title in manner aforesaid, or to receive instead thereof a lease for the period of thirty years, free of rent, the terms of the lease being in all respects those required by the existing laws.

4. Resolved, That the foregoing resolutions and the principles adopted by the Board of Land Commissioners are not to be understood in a compulsory sense towards any alien who may prefer to retain his existing title, with all its concomitant doubts and risks.

5. Resolved, That nothing in the foregoing resolutions or in the principles adopted by the Board of Land Commissioners is to be understood in a sense unfavorable to such special acts of grace as the King may wish to perform towards individuals who may have rendered important services, or who may confer some signal benefit upon this kingdom, or whom His Majesty may wish to favor by exempting them, in whole or in part, from the ordinary rate of commutation due to Himself.

6. Resolved, That in accordance with the first benefit stated by the Land Commissioners as likely to flow from their labors, it is expedient to enact a law ordering the equitable division of all properties held by joint-tenure, on petition of one of the parties interested, and that where the property jointly held is so circumstanced as not to be divisible, it shall be compulsory on all the joint-holders, on petition of any one of their number, to sell the property, by public auction, to the highest legally qualified bidder, and to divide the proceeds according to their several interests, provided that nothing in such law, to be enacted, shall prevent any one of those joint-holders from purchasing the property at said public sale.

7. Resolved, That in order to raise a fund for the encouragement of native agriculture, it is expedient that it be made lawful for natives to sell to foreigners in FEE-SIMPLE, house-lots, with sufficient land for offices and a garden, and that the Government should encourage natives who so sell, and possess themselves of funds to retire with their families into the country and apply themselves to some profitable branch of agriculture.

8. Resolved, That where the Government possess lands in towns, it is expedient that they should in like manner offer them for sale to foreigners, or others, wishing to buy; and that the proceeds of such sales, if made to foreigners, be set apart towards the formation of a fund, out of which advances in cash are to be made to well deserving

natives, who may wish to become agriculturists, but are without the necessary means.

9. Resolved, That His Honor, Judge Lee, is hereby requested to frame the project of a law necessary under the foregoing Resolutions to be submitted to the King and Council, and thereafter to the Legislature.

10. Resolved, That notwithstanding the provision already made in the laws, it is expedient that in all Deeds relating to lands granted, sold or leased to foreigners, a clause be inserted, stating clearly and expressly, that in every thing relating to said lands they are subject to the King's jurisdiction, and to that only.

Nevertheless Mr. Wyllie cheerfully confesses that the institution of the Board of Land Commissioners, aided by the powerful support of the King, and wisely conducted by their President, has done an incalculable degree of good to this Kingdom. It fell to the lot of Mr. Ricord to lay the foundation of that institution; to others belongs the credit of having built on that foundation, eliciting order out of chaos, and giving the stimulus to agriculture, which the certainty of a right to the soil naturally produces.

Since writing what precedes, Mr. Wyllie's attention was drawn to the following report of the Hon. and Rev. Mr. Bond's speech, in the 'Argus' of the 18th of May:

"Mr. Bond opposed the bill, but regretted to be obliged to do so. To remit this debt would be a virtual invitation to Mr. Ricord to return to these Islands, and thus he did not wish to see. Mr. Ricord was an ambitious, talented, but unprincipled man. Mentioned that he was one of the filibustering expedition against Ecuador, and thought that his presence here again would be any thing but desirable. It was a contradictory policy to appropriate \$36,000 or \$40,000 to keep out Filibusters, as the Minister of Foreign Relations had recommended, and then invite one of the same description of persons among us."

Mr. Wyllie knows of nothing so likely to bring Mr. Ricord here as the above imputations. How far they are just will appear from the following extracts:

EXTRACTS FROM THE SAME LETTER FROM MR. RICORD, EXPLAINING HOW UNINTENTIONALLY HE WAS DRAWN INTO THE COMPANY OF THE PARTY OF GENERAL FLORES.

Speaking of his voyage from Nicaragua to Chile, Mr. Ricord writes: "At the end of six weeks I found myself, for the first time, a perfect stranger in Valparaiso, and took no pains to make acquaintances; but being still intent upon returning to San Francisco, I was compelled to wait nearly a month for a vessel. The American ship 'Lyons' was at length put up, and I secured a berth in her by paying \$138. Upon embarking, however, I found myself pretty well crowded—380 steerage and deck, and 20 cabin passengers besides myself. The deck and steerage individuals purported to have been

hired by the cabin ones to work the California mines, and well knowing it to be usual thus to take working men into the gold region from the Southern Republics, I had not the smallest suspicion of any other design, nor had the poor creatures themselves, until we got off the 'Lobos' Islands, where it leaked out that they were designed to augment the forces of General Flores against Ecuador. The deck and steerage passengers upon hearing this revolted, overpowered the crew and obliged the captain to put into the nearest port, Lambayeque; but, here, as bad luck would have it, one of Flores' armed vessels happened to lay at anchor, which perceiving a mutiny, and believing it to be one of the General's decoys, brought her guns to bear upon us and quelled the disturbance.

"I was under no constraint—was at liberty to go or stay when and where I pleased, but no vessel offered, and consequently my position as nearly resembled duress as if incarcerated. Under these circumstances, I wrote to Mr. Cushing, American charge, for a safe conduct to go up to Guayaquil, but the Authorities of that city very justly refused such a facility to one seemingly connected with the invading expedition."

After explaining the seizure of Flores' steamer, by the deceived Chilians, his consequent defeat and the arrival at Payta, Mr. Ricord says:—

"I now promptly entered my Protest before Gerard Garland, Esquire, American Vice Consul, and libelled the 'Lyons' in the courts of the country, for a considerable sum, consequentially due to me, for losses; and the vessels being all ordered to Callao for adjudication, I went there accordingly. Yet so many claimants appeared, lenders upon bottomry, seamen for wages, officers and soldiers for pay, so many questions of law were mooted, and so many causes of delay interposed, that after two months spent in vain endeavors to realize something, I made up my mind not to lose more time or throw away the small residue of my good money after bad, so executed my Power of Attorney to a Lawyer in Lima, and embarked in one of the Pacific Steam Navigation Company's Steamers for Valparaiso. * * * *

The fates seemed to block up my Northward progress, and home, under the weight of so many disasters, I could not think of. Better far bleach my bones upon the sands of some desolate Island of the Pacific. It appears to me any place, under such circumstances, would be more tolerable than the Hawaiian Islands. Do not ask me why; the reason is only sensible—it is unutterable. Hence I have concluded to try that Continent or those Islands upon the other side where the Pacific leaves an Eastern coast."

* * * "How does Chief Justice Lee like it? I hope he has found the Hawaiian Islands quite as much to his mind as he thought OREGON would be, and where, in the fall of 1846, I had so much trouble to keep him from going. Mr. Bishop, too, I am glad to know has succeeded so well. * * * I have read Mr. Armstrong's Report with great interest, and no one can do so, without a thorough conviction of the prime importance of his Department, and that it would be folly to follow the counsels of Mr. Kūhū."

EXTRACTS FROM MR. RICORD'S LETTER TO MR. WYLLIE, DATED PA
PEITE, SOCIETY ISLANDS, 12th JANUARY, 1853.

* * * "The conduct of * * * I regarded with disgust and the movements of your convention with apprehension, lest when the people got the King's warrant for trenching on the Royal Prerogatives, they should lop off too many of those fundamentally essential to the preservation of Monarchy. And this was enhanced by considering how many really experienced statesmen or artists in the theory of Government you could assemble to the delicate task—I mean Adams, Jeffersons, Jays, Madisons, or Peels, Greys, Clarendons, Broughams and Lyndhursts, I think I could name the talent employed, and see, with alarm, that it consists only of AMATEURS, cradled in Republicanism, who would concentrate in the people all the real powers of sovereign and leave His Majesty only the Executive Presidency. Now, Monarchy is something more than this. It has inherent powers, rights and privileges, not derived from the people, which are, and ought to be, considered as *'Jure divino.'* See the debates upon this subject in the British Parliament upon the flight or abdication of James II, and the accession of William and Mary. No one can doubt that at such a crisis, if the Parliament had chosen to republicanize, it was perfectly in the power of the Peers and the Commons of England to have deprived the succession of any attribute at all dangerous to the public freedom and safety. Yet they had too much good sense. They saw it to be necessary, proper and seemly, in retaining the form of Monarchy to retain with it its Majesty, dignity and underived power which we call Prerogative, and the national pride forbade any other repository for these than the Executive head of the nation. Hence the declaration of rights which forms the constitution of England, merely recapitulates the general principles of liberty which had prevailed from time immemorial. The same—substantially—embodied in the American Declaration of Independence, and which, without detail, without *'modus operandi'* for King, Parliament or Judiciary, form a Monarchical Constitution; only fixing grand barriers in Government, subject to which, William and Mary were invited to assume the reigns of Government—and the very act of doing so, was a tacit promise not to pass those limits in their administration of the laws. But instead of such a lofty view of Hawaiian grandeur and honour, the Hawaiian Convention seems busy in mending out a complete machinery to all the Departments of Government, and in fixing the bounds of every thing as in the Federal and State Constitutions of the United States, while the King is cramped down to a very small position in the affair. According to my understanding of the old Constitution it was gratuitously conferred from the superabundance of his absolutism, and the grants made in 1840, might have been enlarged at the King's pleasure, without consulting the people. But, of course, in order to perfect the instrument, it is presumed he would call to his assistance such Agents and Ministers as he could confide in. Such does not seem the way the thing worked in this instance, when it got agoing in the convention, for I do not discover that the members thought themselves at all lim-

ded in their retrenchments upon the Sovereign, or that the King either reserved to himself or exercised the right of dissenting from the form prescribed to him. I know not what views were entertained upon the subject by His Majesty's Ministers, nor how the PROGRAMME of the new national charter was got up." * * *

"I am a rank Tory in this matter. The consequences of such indulgence are already plainly visible, and considerably at the far end of it all, I foresee the supplanting of the native Dynasty instead of the preservation of Monarchy. When it comes remember me." * * *

"Parallels for your Islands can only be sought with safety from the British Constitution; they ought not to be borrowed from the United States, if Monarchy be the object." * * *

"I observe, again, that the Act providing for a reciprocal treaty with the United States, in certain articles of commerce; and another Act to mitigate the land tax were PASSED by the King and APPROVED by the Nobles and Representatives, thus reversing the order of supremacy, rendering the King INFERIOR and the Legislature SUPREME. Such little technicalities tell abroad and may affect great questions in after times." * * *

"Perhaps your New Constitution makes it necessary to succumb to the Democracy, for though I have never seen it, I suppose it to be verbatim like that of the United States barely substituting the word KING for that of PRESIDENT, and NOBLES for SENATORS. I conceived this idea from the borrowing propensities so conspicuous in the doings of the Legislature. One of the native members of the Lower House, (Mr. Kahili,) gravely proposed to abolish the Ministry of Public Instruction, BECAUSE told on the floor of the House that no such department existed in the United States. This is very flattering to UNCLE SAM." * * *

"I do not mean to assert that the law should not be modified in the sole instance of a Minister of Finance. I think there ought to have been and ought to be a different measure of accountability on his part from that to which the King holds the others, because he is the Repository of the Revenues derived in great part from the people, and has their disbursement for the public benefit. Yet, if I remember right, even the disbursements, under the Monarchical system, were not regulated by the Legislature, but by the Board of Finance—a special council of the King in Privy Council. On this subject the whole plan seems to have been changed or misconceived, and American jurisprudence instituted for the rules of Hawaiian jurisprudence, in spite of existing laws, without waiting to change the laws." * * *

"But I was thinking of Monarchy when the laws were framed, and their concentric tendency to the King. Their genius is concentration, and if your New Constitution so far neutralizes the Executive as to render the Legislature a co-ordinate and Sovereign Branch of the Government, as in the United States, why, of course, they cannot be expected to work. But, if I mistake not, even Great Britain, whose Parliament is said to be omnipotent, has never done

so far. The House of Commons votes SUPPLIES instead of APPROPRIATIONS, and in making estimates of these supplies takes into account the various items needed for Household, Civil List &c, &c ; but I am not aware that they pretend so far to encroach upon the Monarch as to specifically appropriate their supplies to given expenditures. My sense of delicacy and propriety, to say nothing of loyalty, would dictate that some little credit was due to the honor and honesty of the King. * * *

"I think the Minister of Public Instruction judges correctly when he recommends abolishing the system of Parish and Church foundations, for it would lead to a charge of sectarianism and partiality.

* * * "When the King stands Plaintiff in all Government civil and criminal enforcements at law, how unsafe to destroy the perfect independence of the Chief Justice, and to what nameless imputations will it not subject both him and the Government. It will require great moral courage in the presiding Judge not to be biassed in his decisions by executive policy, after having aided in discussions often involving a pending cause. In the United States such amalgamation would be viewed with alarm, and in England Chief Justice Jeffries and his 'bloody Assizes' are an instance of how the system worked. * * *

"In my opinion no Judicial Functionary, however conscientious, should be placed in conjunction with the Executive Branch of any Government, Monarchical or Republican, nor, above all, should be its legal adviser. The Chief Justice should have no clients, and least of all the King. * * * I see no positive objection in principle to giving him a seat in the Upper Legislative Branch, which would in fact be highly beneficial, as is manifest in the British Parliament (House of Lords) which happens also to be the Court of 'DERNIER RESORT.' Against this, that the American system differs, forms no objection; since you do not propose copying any of them, but choosing approved principles of Government wherever to be found. There is a very little to be INVENTED at this ERA. Tried principles are best. Neither would such a juncture prove complimentary to a Chief Justice, it would only add to his embarrassment.

"What do you want of an army? But, you will say the laws presuppose one by creating a Minister of War and of Marine. Very good—the power should reside somewhere, and is, I conceive, properly reposed, to be used in all such cases as the contemplated invasion by Californian and other Pirates. * * *

"You are doubtless impatient, at all these political observations, and I will therefore pursue them no further—neither am I in possession of the necessary DATA for forming opinions of your course."

The allusion made to the duty of the King's Ministers towards the King, while discussing the New Constitution, involves a censure upon Mr. Wyllie, he not having been "cradled in Republicanism." Mr. Wyllie's review of the Old Constitution, and his observations on the New Constitution, reported by the committee of three, on the 22d November, 1851, which he read to the House of Nobles on the 20th of April 1852, will vindicate him from that censure.* So will also an entirely new Constitution, which

* Mr. Wyllie does not mean to say that it is any merit in him to have been "cradled" under a Constitutional Monarchy, or that it is any demerit to others to have been "cradled" under Republican Institutions.

he had framed, and was ready to submit, in case the New Constitution recommended by the committee should have been thrown out in either House, or been rejected by the King. If the Commissioner on behalf of the people had been the sole committee both for them, the King and the Nobles, to draw up a New Constitution, the result would have been a more perfect instrument. As the committee of three were constituted, it was his special duty to look to the rights of the people and he did it well; to others it specially belonged to look after the rights of the King and those of the Nobles. To say more would be invidious; to have said less would have been UNJUST.

Mr. Wyllie has also to notice the following speech of the Hon. Mr. Robertson, Speaker of the House of Representatives, as reported in the same number of the *AREUS*:

"In answer to inquiries by Mr. Bond, Mr. Robertson stated that Mr. Ricord's salary was at that time \$1,400, and that of Mr. Judd 1,500. Mr. Wyllie received no salary for the first year. Mr. Judd had since received a wharf lot (which rents annually for \$1,000) in consideration of the smallness of his former salary, and for services rendered during the occupation of the Islands by Lord Paulet. Was not aware that Mr. Ricord had received any similar compensation. Mr. Ricord had performed very arduous duties; in fact had worked day and night in the organization of the Land Commission, and in compiling the Statute Laws."

It will be seen by referring to the King's letter of the 13th March 1847, page 8, that His Majesty ordered the Minister of Finance to pay out of His own funds so much as might place Mr. Ricord's salary on a PAR with that of Mr. Judd. Mr. Ricord's account was to have been so settled, on the 31st of March 1847.

By referring to document No. 14, page 27, of the Appendix to the Court Record of Ladd & Co. versus the King, will be found a wharf lot leased to them for fifty years, at a yearly rent of \$1,000; and to document No. 16, page 28, will be found the lease to the same of another wharf lot for fifty years, at a yearly rent of \$500—the first lease dated 1st November 1842—and the second 21st February 1858. The rents of these two wharfs collectively \$1500 (Mr. Wyllie believes) were settled upon Mr. Judd, in 1843, for 30 years; but in February 1848, those rents were commuted for an annuity of \$1000, to be paid to him, for the same period. In stating these facts, which may well have escaped the recollection of the Honorable Speaker, Mr. Wyllie does not mean to deviate from the rule laid down at the outset, of seeking bare justice for Mr. Ricord, without instituting a comparison between his merits and rewards and those of any other officer. He hopes eventually to obtain his end without the necessity of resorting to that invidious course. He is a stern advocate for strict and equal justice to all men, and repudiates any thing more than justice for himself. Upon this ground, while thanking the Honorable Speaker for the reference made to him (Mr. Wyllie), he adds an extract to correct a slight misapprehension about his salary:

**EXTRACT FROM MR. WYLLIE'S LETTER TO JAMES JACKSON JARVIS, ESQ.,
DATED 7TH DECEMBER, 1850.**

"Yesterday Mr. Hall lent me the New York Herald of 28th September last, containing, as published in the Herald of the 26th, a letter from this city of the 4th July, signed 'Hawaii.' My stomach loathes the praise undeserved that is there bestowed upon me for my **DISINTERESTEDNESS &c.** When I accepted the office, I did so provisionally, intending to return to England via China, towards the end of 1846, after the Typhoon season was over, and in that case to have paid all my expenses. But when I took office the doings of * * * had created so much diplomatic work that it was altogether impossible to bring it to a close by the time I had prefixed to myself, so that a longer retention of office became indispensable, and as every year's delay here entailed on me a grievous loss in my funded and other property at home and in the United States, therefore, in bare justice to myself, I could not forego my right to be paid as others were of the same rank. It is therefore not true that I have **SERVED FIVE YEARS AT MY OWN EXPENCE**, except in so far as that all I have ever received (from this Government) on a fair calculation, falls considerably short of the losses I have been subject to, in consequence of my absence from my private property."

Referring the reader to what Mr. Wyllie says at pages 25 and 26, about the preparation of the New Constitution, he has thought it opportune to add his address to the House of Nobles of 20th April 1852. The following is an exact copy of that address :

"Before entering upon the discussion of the New Constitution reported by the committee of three, on the 22d of November last, it may be well to take a survey of the old Constitution granted by the King on the 8th of October 1840, and which is still in force.

That Constitution recognizes the fundamental principle of a Constitutional or a mixed Monarchy, of King, Nobles and Representatives of the people, and the principle of each having a check upon the other in the enactment of laws. It was a great boon granted by the King, to the people at the time, as it gave to the lower orders a voice in the Government, which they never before had. Under Kamehameha I. and Kamehameha II., they had no such voice, but those Kings governed arbitrarily, without any other checks than that of the Chiefs of their council, and that of the **KUHINA NUI**, instituted by Kamehameha I.

But that Constitution is no longer applicable to our present circumstances; and it has been already departed from in numerous instances. I shall proceed to shew a few instances of such **DEPARTURES** from the strict letter of the Constitution.

The Constitution declared Kamehameha I. to be the owner of all the land in the Kingdom, in common with the Chiefs and people, of whom he was the head; it declared the Kingdom to belong to His present Majesty Kamehameha III.; and it strictly provided that all Government property should be made over to the King through the **KUHINA NUI**. What was meant by these provisions of the Constitution will be clearly understood by referring to the principles laid down by William Richards, John Ricord, J. Y. Kanehoa, John Li and Z. Kaauwai, the King's Commissioners for

quieting land titles. After examining, on oath, a great number of persons of different characters, many of them old men, natives and foreigners, landlords and tenants, perfectly acquainted with the ancient usages of the country, they came to the conclusion that should the King allow to the landlord one-third, to the tenant one-third, and retain one-third to himself, according to the uniform opinion of the witnesses, His Majesty would injure no one but himself. As an illustration they added that a tract of land then in the hands of a landlord and occupied by tenants, if it were equally valuable, might be divided into three equal parts, and an allodial title for one-third be given to the landlord; an allodial title for another third be given to the tenants, and an allodial title to the last third be given to the King, as HIS PROPORTIONAL RIGHT. Thus, in view of the provisions of the Constitution, and of the principles laid down by the Land Commissioners, it was only left to apply to the WHOLE lands of the Islands the same principles that they hypothetically applied as just to one isolated tract of land. Nevertheless, both these provisions of the Constitution and the principles of the Land Commissioners were alike disregarded. In the Act of 7th June 1848, a FOURTH proprietor was created, namely the Government, to which were assigned, by name, a great many landed estates, while no assignment whatever was made of the third share of all the lands of the Kingdom that had been declared to appertain to the lower orders or tenants. Thus, the King was deprived of a great portion of lands appertaining to HIM; the common people did not receive what belonged to them; the Government received what neither the Constitution nor the principles of the Land Commission gave them any title to receive; and the Chiefs received what, to this day, they do not clearly understand, nor can agree to among themselves. But that act created still another landed interest, which may be called the FIFTH landed Proprietor, namely, the Fort and military, to whom, on an alleged grant by Kaahumanu, were assigned many lands by name, to be cultivated by soldiers and other tenants, under the direction of the Governor of Oahu and his successors in office. In fine every thing done in that act was a DEPARTURE from the Constitution, and from the principles carefully laid down and adopted by the before-named Land Commissioners, and fully sanctioned by Parliament.

Another instance of the unsutiableness of the old Constitution to the present state of things is afforded in the 1st Act of Kamehameha III., of the 29th October 1845, creating five Executive Ministers. The Constitution, read literally, makes no provision for the appointment of any such Ministers. On the contrary, it expressly provides that there shall be only ONE Minister or KUHINA NUI, and that His Majesty, with the concurrence of such only Minister, is to transact all important business of the Kingdom, which is not by law assigned to others. The old Constitution further expressly orders that the produce of taxes as assessed by the Governors of Islands, is to be made over to THE KING, through that ONE Minister; in fact, it makes the King his own Treasurer. The Part III, of the second Act Kamehameha III., of the 27th April 1846, is altogether at variance with the Constitution in that respect, and very justly so. Parts I., II., IV. and V., embrace an organization of Constitutional Government of high Administrative utility, but for which no express foundation will be found in the old Constitution. On the contrary, it expressly confers upon the

Governors of Islands omnifarious powers, civil, military and fiscal, as great as those of the King himself, with a mere nominal dependence upon His Majesty and the Kuhina Nui. In fact, under the old Constitution, considered apart from laws subsequently passed, there are 4 *imperia* in one *imperio*, which of itself is a radical defect.

By the old Constitution the Governors are not even nominated by the King; they are nominated by all the Chiefs, and appoint the Judges independently of the King, and even preside over them, not in His Majesty's name, but in their own. All these are encroachments upon the Kingly Prerogative as it exists in all Constitutional Monarchies.

The old Constitution, after declaring who constituted the Members of the House of Nobles, on the 8th October 1840, provided that, "should any other person be received into the Council IT SHALL BE MADE KNOWN BY LAW." From that the implied meaning is, that beyond the number of Nobles there named other persons might be received as Nobles, and that after being so received a law was to be published announcing their reception. The reception being in the PAST tense, and the legal promulgation in the FUTURE, it cannot be supposed that it ever was intended that the Representatives of the people should have any deliberative voice in the creation of Nobles, or that the nomination of the latter should be made otherwise than by the King. For the Representatives of the people to pretend to any right to say who shall sit or who shall not sit in the House of Nobles, would be just as unconstitutional as it would be for the Nobles to say who should sit, or who should not sit, in the House of Representatives; and it would be contrary to precedent in all Constitutional Monarchies where the three Legislative powers are properly balanced. The word LAW, in the quotation referred to, therefore, is to be understood as ENUNCIATIVE or DECLARATORY, and to be approved by the REPRESENTATIVES of the people as a matter brought to their COGNIZANCE, but not referred to their DELIBERATION. The words "no law shall be passed without the approbation of a majority of them"—obviously apply to enactments which relate to "the business of the Kingdom—to its general interests"—and not to what concerns only the composition of the House of Nobles.

But it is not usual in Constitutional Monarchies that even the FORM of the approval by the Representatives of the people of the creations of Peers or Nobles should be required. The *fiat* of the King is held to be sufficient; the creation is announced as a matter of fact; the King's right to make the creations is never disputed; if persons who are unworthy are so created the King's Ministers, for the time being, are always blamed, but the King never, for it is presumed that the King exercises all his rights of prerogative under their cognizance and advice. It is a great defect of the old Constitution to have made it otherwise with King Kamehameha III.; and it is another to have conferred upon the Governors of Islands, and upon the Chiefs the power to make appointments, which, by the analogy of all Constitutional Monarchies, ought to have been reserved to the King himself.

The old Constitution leaves with the King the power to appoint the day and place, for the House of Nobles to meet in April every year, to consult with his Majesty on all the great concerns of His Kingdom, and besides what business He may "commit to them." But it is not clear in regard to the Representatives of the people, though it is to be presumed that they

also were to meet at the same time and in the same place appointed by the King; and that if His Majesty and His ruling Chiefs should consider it desirable, the Representatives should meet more than once in any particular year, they should do so. The Constitution is also defective in not providing for the right of the King to adjourn, prorogue and dissolve the House of Nobles and the House of Representatives.

Another defect (so long as Monarchy exists on the Islands) is that it leaves to the Representatives of the people the appointment of four persons who, with the King and Premier, constitute the Supreme Court of the Kingdom, in whose hands are life, death, confinement, fine and freedom, and whose decisions are final. The powers of grace, pardon and reprieve were thus taken from the King; all laws subsequently passed to a contrary effect, all Royal Commissions of a Judicial character are so many *DEPARTURES* from the strict letter of the Constitution.

We are thus left with a Constitution which is "one thing," and an organization law and usages which is "another thing;" and hence, the urgent necessity of an *amended* or altogether *new* Constitution.

But the most serious of all questions connected with the old Constitution is—was it ever valid? The instrument itself provides that it should not be considered as finally established until after the people had generally heard it and given their assent to it. Has that assent of the people ever been given? It was agreed to by the Nobles and signed by the King and "Kuhina.Nui," but by the Constitution itself, the Nobles could not convey the assent of the people. If the assent of the latter have never been granted, then is the Constitution, even now, *not finally established*, nor can any of its provisions be quoted as a bar to a Constitution entirely new, and more perfect in its details.

In the obtaining of such a reformed Constitution the people and their Representatives have a very great interest; for the present Constitution, to its other anomalies, adds that of complete silence upon the most valuable and exclusive of their rights, under all free Governments, Monarchical as well as Republican, which is that of receiving the Budget, and after consideration thereof originating and voting all revenue bills. Article V., chap. 2, part III., of the second Act Kamehameha III., of 27th April 1846, remedies that defect, but not according to the strict letter of the Constitution. Here then is another *departure*.

Having made these remarks upon the old Constitution, I proceed to the consideration of the New Constitution of the 22d November last, as recommended by the committee of three.

I approve generally of the Declaration of rights, chapter 1, consisting of 23 articles. Perhaps, the wording in a few of the articles may be improved; and the last five left out from the declaration of rights and brought in under the heading of the House of Representatives.

In the three first articles of the second chapter, I would suggest alterations which, without weakening their liberal provisions, would assert more expressly the King's Prerogative in harmony with the usage of other Constitutional Monarchies.

I should object to article 5th altogether, as unprecedented in any Monarchical Constitution which I can remember.

In article 11th I would suggest that the *yeas* and *nays* be invariably recorded upon all questions of public interest.

In article 12th I would suggest an amendment grounded on the King's Prerogative.

In articles 15 and 16, I would leave out all that confers upon the Representatives of the people the right to elect members of the House of Nobles. I consider that, upon the principle that the Nobles should not appoint Representatives of the people, so the Representatives of the people should not appoint members of the House of Nobles.

To the age fixed in article 17, I should object, particularly in the case of Princes of the blood.

As the House of Nobles is, and is likely to be, constituted, I should doubt its *competency* to exercise the high Judicial functions which (in accordance with usage) the 10th article confers upon it, in a way satisfactory to the public, unless it were presided over, as is the House of Lords in England, by a Chancellor.

In regard to articles 19 and 22, I entertain much doubt of the wisdom of having an entirely new Legislature every year, or of giving the right of suffrage to all men, irrespective of any property qualification, or of any proof that they have paid their taxes, or hold any stake in the country.

In view of what is said of impeachment in article 8, of chapter 1, in articles 18 and 24 of chapter 2, and in article 5, section 1 of article III., I would suggest that the course of procedure, in cases of impeachment, should be determined by a particular law.

In article 6, section I chapter III., I would extend the King's Prerogative to convocation, adjournment, prorogation and dissolution without any other qualification than that the Parliament, in time of peace, should meet at the least once every year, by His Majesty's convocation.

In article 12th, I would suggest that besides having the countersignature of the Kuhina Nui, every official act of the King should be countersigned by the Minister of the Department to which the subject of the act may belong.

Articles 1, 2 and 3, section 2, chapter 3, are embodiments of the provisions of the old Constitution. They conflict with all known Monarchical Constitutions; create a *dual* Sovereign with powers indefinite, the exercise of which, in hands less loyal and conscientious than those of Mr. Young, might bring that dual Sovereign into collision with the House of Nobles and Representatives, while such powers have really no practical utility.

To articles 4, 5 and 6th, I am not prepared to start any objection further than to strike out the *AND* between "otherwise" and "during," in article 5th.

To the 4 articles in section 3, chapter 3, I see no great objection, but I consider that one article providing that the King shall preserve His Cabinet and Privy Councils as at present constituted, subject to what changes it may please His Majesty to make, and with power to frame the *bye-laws* for their own procedure, would be sufficient for all useful purposes.

On the three articles of section 4, chapter 3, relating to the King's Ministers, being of that class myself, any remarks that I might make might be misconstrued. But it appears to me that the words *are appointed* would probably express the meaning of the committee and their respect for the

King's Prerogative more correctly than the words *shall be chosen*, which stand on the first article.

I do not approve of articles 1, 2 and 3, of section 5, chapter 3, so far as they provide that the Governors of Islands shall be chosen by joint ballot of the House of Nobles and House of Representatives, and not be appointed by the King; and so far as they provide that the Governors shall hold office during four years only, and not during the King's pleasure.

Upon the same principle I object to all of the 5th article that follows the words "*to fill it.*"

I object also to the power given to the Governors, in the 7th article, to appoint the District Justices of their respective Islands. The appointment of such officers, I think, should rest with the King.

By the existing laws the Governors of Islands are liable to impeachment the same as the King's Ministers. In contending for the King's right to appoint both, I do not mean that they should be exempted from the strictest accountability to the Legislature, under any known Constitutional Monarchy. There are strong reasons why they should not be less accountable; if the extent of confidence reposed, and the absence of inherent power to *check or resist*, give the measure of temptation, then surely all who hold office under Kamehameha III. ought to rejoice in every opportunity to prove that they do not yield to that temptation.

In regard to the Judiciary, I am ill qualified to pronounce an opinion upon the 12 articles of chapter 4. But I may be allowed to say that I much approve of the provision, in article 6, that a *Chancellor* should preside over the Supreme Court. No officer of lower grade is worthy of representing the King's person in that high Court of final Judicial decision. If the *Chancellor* should be declared *ex-officio*, President of the House of Nobles, with a seat in the Cabinet, after the example of what obtains in England and elsewhere, I should like it still better. I may be permitted to remark farther, on behalf of the King's high Prerogative, as it is carefully guarded in other Constitutional Monarchies, that I do not approve of articles 9, 10 and 11, in so far as they commit the appointment of the Justices of the Supreme Court to the two Houses, and of the Circuit Judges to the House of Representatives. It is quite reasonable that none but properly educated and qualified persons, of good characters should be appointed to administer justice in the King's name, and it may be proper that the power to recommend persons so qualified should be lodged with those who can best judge of their qualifications, but they ought to be appointed by the King, and after their appointments they ought to enjoy all the independence that is necessary to secure the impartial and fearless exercise of their judgment, and to ensure that end and freedom from corruption, they ought to be provided with ample salaries.

Under our existing laws, Judicial officers are open to impeachment, and although as an enemy to all surprises which open the road to malice and injustice, I approve of the 20 days notice to Judges before either House shall act against them, I do not see upon what principle the Ministers of the King are to be less tenderly dealt with, as I understand both them and the Governors to be, by article 8 of chapter 1.

Having thus gone through the New Constitution, in a general way, you will not fail to have perceived that my main objections to it are founded

upon what I consider due to the King's Prerogative. Upon this point I shall speak as *plainly* as I feel *strongly*. I have no wish to make the King the tyrant of his people, nor even though I wished, or though we all wished it, do I believe that we could induce Him so to change his generous, liberal and humane nature. But I do desire to see Him clothed with all the Prerogatives which the Queen of England possesses, *saving only Her Supremacy in things spiritual*. Now, what are the chief Prerogatives which Her Majesty possesses? "Her person is sacred. She cannot by any process of law be accountable for any of Her acts. Her concurrence is necessary to any Legislative enactment. She sends Embassies, makes treaties, and even enters into wars without any previous consultation with Parliament. She nominates the judges and the other high officers of State, the officers of the Army and Navy, the Governors of Colonies and Dependencies, the Bishops, Deans and other Dignitaries of the Church. She calls Parliament together and can at pleasure prorogue or dissolve it. She is the fountain of honor; all hereditary titles are derived from Her grant."

But how does she *exercise* these great powers? Not without the advice of Her Ministers, for the time being, who can be taken to account; and that a very strict one, by Parliament. The Ministers cannot hold office in the face of a disapproving Parliament, for the latter can refuse to vote the Mutiny Act, whereby the whole Army and Navy would be disbanded, and they can stop the supplies which would annihilate the Government itself.

Mr. Thomas Stephen who wrote the "Book of the Constitution of England," with the *Reform bills* of England, Scotland and Ireland, in 1832, says,—“The stronger the Prerogatives of the Crown the greater is the people's security; and it is absolutely necessary that the Crown should be free from all coercion, for whosoever can coerce the King can oppress any other man, and the chief end of Government is to preserve the people from each other's oppression. Where the King has not sufficient authority to protect the weak from the tyranny of the strong, when His prerogative is lessened and reduced, then the liberty and freedom of the people are destroyed, and they are let loose like *Ishmael*, every man's hand against his neighbor, to pillage and oppress, which is the greatest and most wretched tyranny.”

Have we not seen all this lamentably and deplorably illustrated in the young State of California? What but the magic name of King, and a wholesome respect, by universal consent, towards lawful prerogative, have given force to our laws and authority to our Judges in the absence of all physical force that could be called in to aid them, while, in California, better laws and Judges have been trodden down by the iron hoof of a self constituted judiciary and hanging Association? I put these questions to you, not invidiously towards a people to whom I wish well, and from whose vicinity to this Kingdom I expect the greatest public benefits of every kind; I put them as a warning to you all, not to weaken the Kingly Prerogative in these Islands. Think not, that without the King, any of us can do any thing for you. We are nobody without the King; we have no power except what we derive from Him; it is only by His Prerogative that we can exercise our functions; but what is of more consequence,

without the King, neither Hawaiian Nobles nor commons can maintain their existence.

Whatever may have been the different political systems under which we have been educated, and however widely we may differ in regard to Governments, in the abstract, I presume we all agree in this, that if the preservation of the native race be our object, (as it is and ought to be our first,) a Kingly Government is altogether indispensable on these Islands. Nor are we left to hesitate about the kind of Monarchy. We have already established by the King's grace, that of a Constitutional or mixed Monarchy. No one wishes to change it; the King himself, and all of us desire to improve it. The question is, how are we to improve it? Most assuredly, not by *paring down* the King's Prerogatives so as to leave him powerless to resist the possible encroachments of the Nobles, or of the Commons; nor by diminishing the power of the Nobles, by giving the Commons a right to fill one-third of the Upper House; nor by refusing to the Commons the right to control the finances of the Kingdom. What we have to do, is to see that the King's Ministers are made responsible for all His acts; that each of these three estates of the Realm have unimpaired the rights that belong to them, in every *well balanced* Constitutional Monarchy.

That of all such, the British is the best, is proved by the experience of 637 years, now just being completed since the great charter of English liberties granted by King John. If so, we ought not to disregard the leading principle of the British Monarchy, which I understand to be that each estate, that is *King, Lords and Commons*, should have an equal and independent control over the other, so as that the policy of the Kingdom should be impelled not in the direction which either might wish from private interest, but should take the direction to which all three freely consent, which is the most likely to be the line of the public good—the good of the greatest number to which we ought all to aspire.

The celebrated L. L. De Lolme, a learned foreigner, who wrote on the Constitution of England, in 1784, concludes his chapters on the division of the Legislative power in the following words:

“In fine, as these prerogatives by which the component parts of the Legislature are thus made to balance each other, are all intimately connected with the fortune of the State, and flourish and decay according to the vicissitudes of public prosperity or adversity, it thence follows that though differences of opinion may sometimes take place between those parts, there can scarcely arise any when the general welfare is really in question. And when to resolve the doubts that may arise on political speculations of this kind, we cast our eyes on the debates of the two Houses for a long succession of years, and see the nature of the laws which have been proposed, and of those which have been rejected, as well as of the arguments which have been urged on both sides, we shall remain convinced of the goodness of the principles on which the English Constitution is formed.”

Not the least advantage of the British Constitution is that it contains within itself a principle of renovation and improvement, so as to adopt itself to all useful reforms. Hence, its stability amidst the shock of empires. This feature of *stability* De Lolme ascribes to the fixedness of the Monarchical prerogative. He says—“The first peculiarity of the English

Government as a free Government, is its having a King—its having thrown into one place the whole mass, if I may use the expression, of the executive power, and having invariably and forever fixed it there. By this very circumstance, also, has the *Depositum* of it been rendered sacred and inexpugnable; by making one great, very great man in the State, has an effectual check been put to the pretensions of those who otherwise would strive to become such; and disorders have been prevented, which, in all Republics, ever brought on the ruin of liberty, and, before it was lost, obstructed the enjoyment of it."

If I am wrong in my wish to support and securely establish the prerogatives of the King, and equally of the Nobles, and of the Representatives of the people, I have laid candidly before you some of the chief grounds upon which I have formed my opinions.

When the New Constitution is discussed in committee, I shall make other remarks upon some of its details; and having passed the second reading, *I now move that its future discussion be committed to a committee of the whole House.*"

Referring to what Mr. Wyllie has said at pages 16 and 21 in regard to imputations made in the Hon'ble House of Representatives, upon the character of Mr. Ricord, Mr. Wyllie has pleasure in adding the following letter received from the Rev. Edward P. Bond:

WILLOW BANK, May 4, 1853.

DEAR SIR:—Herewith I return the extracts from Mr. Ricord's letter, together with the memorandum of proceedings of the Privy Council, for the perusal of all which please accept my thanks. I shall take an early opportunity to correct the report of my remarks as published in the "Argus," and to state to the House the new light which I have received in relation to Mr Ricord's connection with the Flores expedition.

I remain with much respect,

Your obedient servant,

EDWARD P. BOND.

His Excellency, R. C. WYLLIE.

As the substance of Mr. Bond's oration had been reported and published, Mr. Wyllie was anxious to obtain a copy of a very eloquent speech said to have been delivered in Mr. Ricord's favor by the Honorable J. W. H. Kauwahi, and, with that view, addressed to him the following letter:

FOREIGN OFFICE, 21st May, 1853.

SIR,—On looking, this morning, at the "Argus" of the 18th, I find that you made an eloquent speech in favor of Mr. Ricord. If you can recollect what you said will you oblige me by repeating it slowly to Mr. Hunt or Mr. Sheldon, that one of the two may write it all down in English. I will then, with your permission, publish your speech with all the other documents relating to the motion to release Mr. Ricord from his debt.

I am glad that so many of the House of Representatives, and that you,

among the number, took a just view of Mr. Ricord's services. It was not right to represent him as a *Freebooter*, an *unprincipled* and *ambitious man*. He was, indeed, ambitious, but only of the honor of serving the King faithfully, and of assisting every body, without charging them any thing for it. An ambition of that kind is not a crime; it is a virtue. All public men who are useful to the State, have that ambition; all who seek only to be useful to themselves want it.

You have done an honor to yourself and to the Hawaiian Nation in taking a just and generous view of Mr. Ricord's services.

With much respect, I remain

Sir, your most obedient, humble servant,

(Signed,) R. C. WYLLIE.

To the Hon. J. W. H. KAUWAHI,

Member of the Hon. House of Representatives &c.

Mr. Kauwahi having kept no notes of his speech, and not understanding English, could not comply with Mr. Wyllie's request.

In conclusion, Mr. Wyllie, in support of the view taken by him, at page 17, that acts imputed to Mr. Ricord elsewhere, should have no weight upon the question of his deserts under services rendered here, quotes from the speech of Lord Palmerston, in the House of Commons, on the 25th of June 1850, as follows:—

"But I say, with those who have before had occasion to advert to the subject, that I don't care what Mr. Pacifico's character is, I do not and cannot admit that, because a man may have acted amiss on some other occasion and on some other matter, he is to be wronged with impunity, by others.

"The rights of a man depend upon the merits of the particular case; and it is an abuse of argument to say that you are not to give redress to a man because in some former transaction he may have done something which is questionable. Punish him, if you will, but don't pursue him as a *Pariah* through life."

In the foregoing quotation, Mr. Wyllie is not to be understood as admitting that either previous to his arrival in this Kingdom or subsequent to his departure from it, the moral character of Mr. Ricord could be justly impugned by any one. In regard to certain old charges brought against him, Mr. Wyllie holds that they are disposed of by the *verdict* of which copy is printed below; and as to the alleged, subsequent connection with the expedition of General Flores, Mr. Wyllie does not see wherein Mr. Ricord dishonorably committed himself. The question is what was Mr. Ricord's private and public conduct, while the King's Attorney General, here; and who it is of his colleagues at the time that will stand forward to accuse him, alleging in himself more virtue, more loyalty, more industry, greater services or more uniform disinterestedness?

Copy of the verdict above referred to:—

"We the undersigned Jurors in the case of Fernando Aredondo Underwood, by his Attorney J. F. B. Marshall *versus* John Ricord, under all circumstances of the case, and taking fully into consideration the evidence adduced, are unanimously of opinion that the said F. A. Under-

wood has no just claim whatever on the said John Ricord, and we do hereby most fully and honorably acquit him, the said John Ricord, of all indebtedness to the said F. A. Underwood, and therefore give our verdict in favor of the Defendant.

(Signed,) GEORGE T. ALLAN,
GEORGE KENWAY,
MADISON CLARK,
JAMES SMYTH,
I. S. HART,
DANIEL P. TRUE,

WM. FRENCH,
F. RODZ. VIDA,
JAMES CAMPBELL,
HENRY ST. JOHN,
A. BARRON,
J. SMITH,

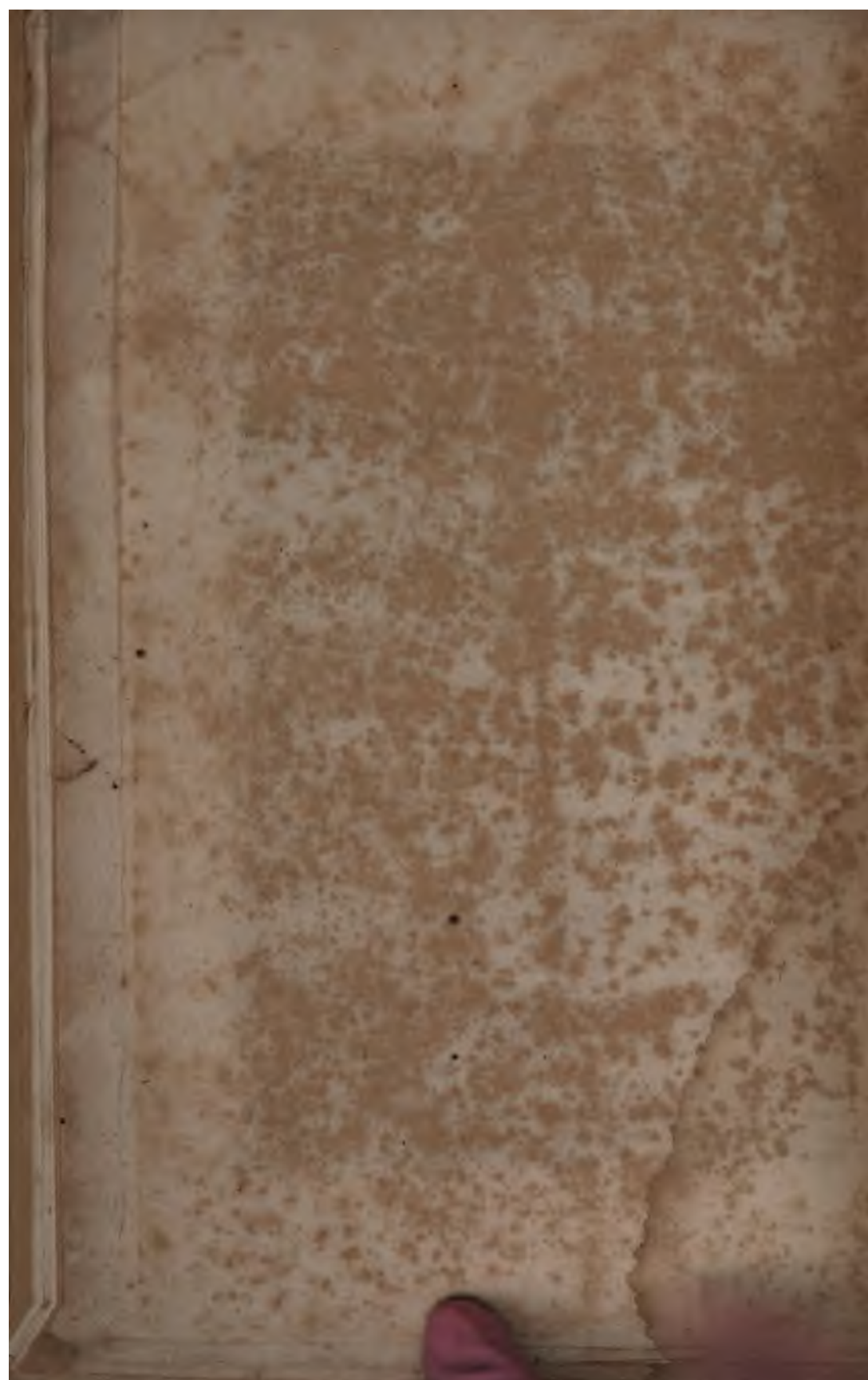
HONOLULU, June 8, 1847.

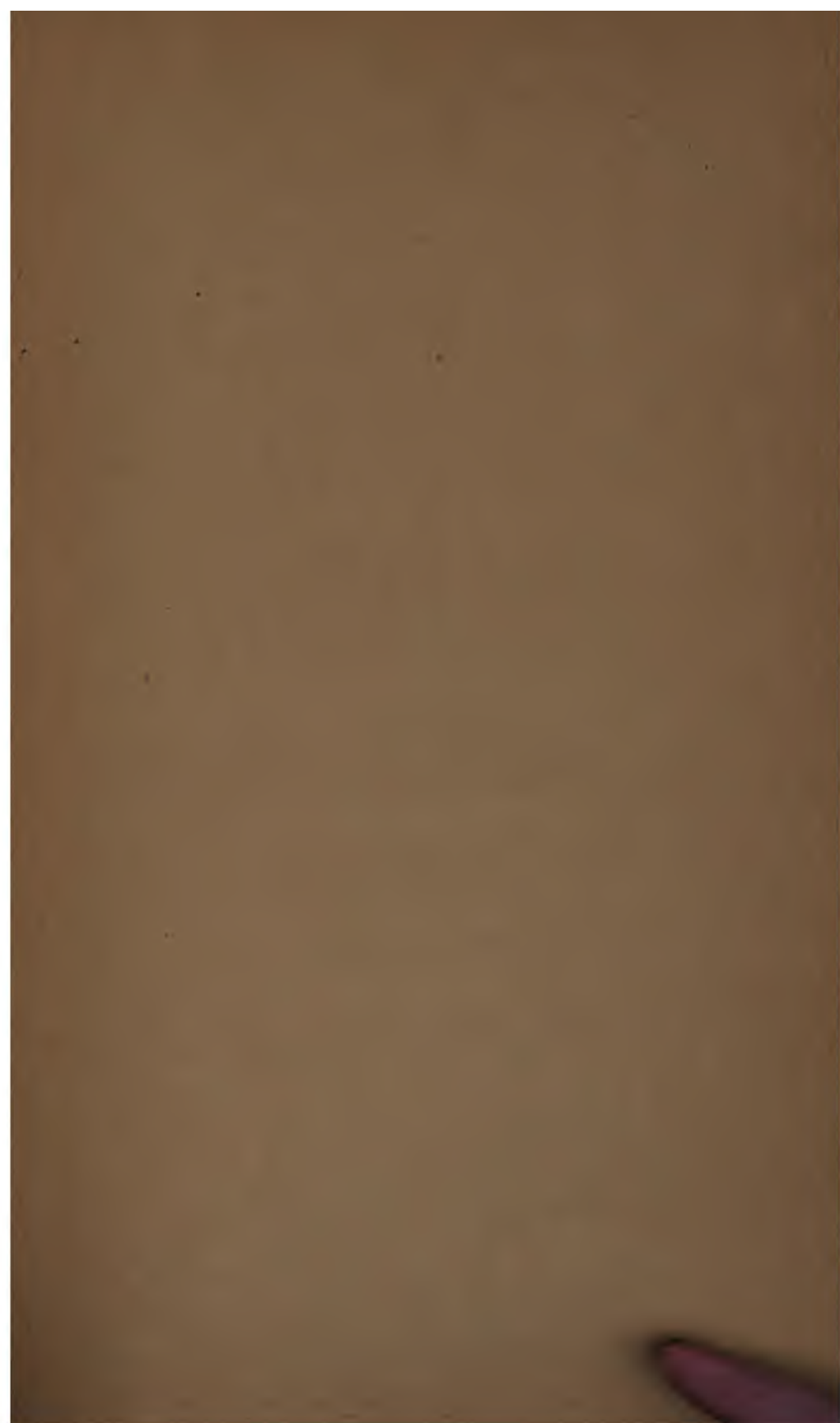
The undersigned repeats that he has published the foregoing, not at the solicitation of Mr. Ricord, but upon the ground of abstract justice to him, in equality with others, believing that the case concerns the honor of the King's Government, and hoping that it will be justly and impartially reconsidered by the Legislature of 1854.

"If there be a crime
Of deeper dye than all the guilty train
Of human vices 'tis ingratitude.
All should unite to punish the ungrateful;
Ingratitude is treason to mankind."—THOMPSON.

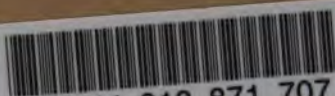
ROBERT CRICHTON WYLLIE.

ROSEBANK, 1853.









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